IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 430 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VEDPRAKASH KHANEJA

Versus

MANAGER

Appearance:

1. Special Civil Application No. 430 of 2004

MR TR MISHRA for Petitioner No. 1

NANAVATI ASSOCIATES for Respondent No. 1

NOTICE SERVED for Respondent No. 2-3

Mr.Mengdey, Asst.GOVERNMENT PLEADER for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 08/03/2004

ORAL JUDGEMENT

Rule. Mr.Gandhi for Nanavati Associates appears for respondent Nos 1 to 3 and waives service of rule and Mr.Mengdey, Ld.AGP appears for respondent No.4 and waives service of rule. With the consent of learned advocates for parties matter is taken up for final hearing today.

2. The petitioner has preferred this petition for the reliefs, interalia, for directing the respondent No.4 to investigate into the entire matter and to take action for nonpayment of minimum wages to the petitioner by the respondent company and the petitioner has also prayed for directing the respondent company to pay the loan amount from his PF account lying with the company's PF trust. The petitioner has also prayed for directing the labour court to dispose of the Ref.(LCA) No.1852/01 at the earliest.

3. The short facts of the case are that the petitioner is in employment of the respondent-Company, namely, Karam Chand Thapar & Bros (CS) Ltd(hereinafter referred to as "the respondent-Co"). It is the case of the petitioner that he is being paid salary of Rs.1875/-p.m. which is less than minimum wages. However, as per the respondent-company the amount of salary paid to the petitioner is not less than minimum wages. It is the further case of the petitioner that the petitioner is having PF Account with the company's PF trust and he is in need of loan for treatment of his son. It appears that the petitioner came to be transferred from Ahmedabad to Guwahati and the petitioner's case is that it is practically impossible for the person like the petitioner who is being paid meagre salary to accept the transfer and as per the petitioner such order of transfer is in effect an order of termination. However, the petitioner has raised dispute under I.D.Act which has been referred to labour court for adjudication being Ref(LCA) No.1852/01 and the same is pending. Since the petitioner raised dispute against the transfer order and consequential termination, the petitioner has not joined at the transferred place and he is not paid salary by the respondent company and therefore there is no contribution to PF account after transfer order. It is the case of the respondent company that the loan application of the petitioner is processed and it was recommended for sanctioning of loan of Rs.40,000/-. However, the PF trust of the respondent company has denied the sanctioning of loan since there is no contribution to the PF account by the petitioner since the order of transfer or in any case for a period of more than one year and under the circumstances the petitioner has approached this court by the present petition.

4. Heard Mr.Mishra for the petitioner, Mr.Gandhi for Nanavaty Associates for the respondent company and Mr.Mengdey, Ld.AGP for respondent-State. So far as loan from PF account is concerned, as such the PF amount is employee's money and such fund is essentially for utilisation by the employee in his rainy days. If the employee has made an application to the concerned PF Trust for sanctioning of the loan for the treatment of his son a sympathetic view is required to be taken and the respondent-company's PF trust could have taken lenient view so as to enable the employee to meet with the exigencies in his difficult financial situation. So far as noncontribution for the period of one year on account of transfer and consequential dispute raised before the appropriate authority is concerned, the same shall be dealt with hereinafter, but considering the peculiar facts and circumstances of the case,that when the respondent company has already recommended for sanction of loan and considering the circumstances that the amount is required by the petitioner for the treatment of his son, the PF trust of the respondent company should accept the recommendation for the purpose of sanctioning the loan as recommended by the respondent company and the amount deserves to be disbursed to the petitioner.

5. As regards the payment of wages, i.e. less than minimum wages aspect is concerned, it would be for the respondent No.4 to examine the same and Mr.Mengdey, Ld.AGP has submitted that within a reasonable period such inquiry can be held and necessary action, if required, shall be taken within a period of three months and therefore I find that on the said aspect no further discussion is required. Even the learned counsel for the petitioner as well as respondent company have also no objection if such an inquiry is held by respondent No.4 and the consequential order, if required, is passed.

6. So far as the pendency of reference before the labour court is concerned, though the matter pertains to year 2001, since it is pertaining to transfer and consequential effect of termination, and since learned counsel for both sides have agreed that the matter should be put to an end as early as possibly, I find that if the labour court considers the matter by giving some reasonable preference for the early disposal of the reference, no prejudice shall be caused to any party.

7. In view of the aforesaid, I find that the following directions shall meet with the ends of justice:

(i) The PF trust of the respondent-company shall disburse the amount of loan as recommended by the respondent-company to the petitioner-workman within a period of one month from today;

(ii) The respondent No.4 shall inquire regarding the aspect of payment of wages, i.e. whether it is less than minimum wages or otherwise, and the petitioner as well as the respondent company shall be at liberty raise all contentions and lead evidence in this regard, and the respondent No.4 shall decide the same and pass appropriate orders in this regard, as early as possible, and preferably within a period of three months from the date of receipt of writ of this court;

(iii) The labour court, Ahmedabad, before whom the reference being Ref(LCA) No.1852/01 is pending shall give due priority to the reference and shall make attempt to dispose of the reference as early as possible and preferably within a period of six month from the date of receipt of writ of this court;

8. Petition is allowed in terms of aforesaid directions. Rule is made absolute accordingly. In the facts and circumstances of the case, there shall be no order as to costs.

8.3.2004 (JAYANT PATEL,J)